
ENGROSSED SUBSTITUTE SENATE BILL 5577

State of Washington

63rd Legislature

2013 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senator Carrell)

READ FIRST TIME 02/20/13.

1 AN ACT Relating to protecting public employees who act ethically
2 and legally; amending RCW 42.52.050, 42.52.120, 42.52.360, 42.52.410,
3 42.52.420, and 42.52.460; reenacting and amending RCW 42.52.010; adding
4 new sections to chapter 42.52 RCW; adding a new section to chapter
5 42.40 RCW; adding a new section to chapter 42.56 RCW; creating a new
6 section; repealing RCW 42.52.500; and prescribing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds that ensuring public
9 trust in government is among its paramount duties. The public expects
10 its elected officials and state employees to adhere to the highest
11 ethical standards during their service, and this includes a commitment
12 to full and independent investigations, with proper penalties, in cases
13 where the ethics in public service act is violated.

14 **Sec. 2.** RCW 42.52.010 and 2011 c 60 s 28 are each reenacted and
15 amended to read as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

1 (1) "Agency" means any state board, commission, bureau, committee,
2 department, institution, division, or tribunal in the legislative,
3 executive, or judicial branch of state government. "Agency" includes
4 all elective offices, the state legislature, those institutions of
5 higher education created and supported by the state government, and
6 those courts that are parts of state government.

7 (2) "Assist" means to act, or offer or agree to act, in such a way
8 as to help, aid, advise, furnish information to, or otherwise provide
9 assistance to another person, believing that the action is of help,
10 aid, advice, or assistance to the person and with intent so to assist
11 such person.

12 (3) "Beneficial interest" has the meaning ascribed to it under the
13 Washington case law. However, an ownership interest in a mutual fund
14 or similar investment pooling fund in which the owner has no management
15 powers does not constitute a beneficial interest in the entities in
16 which the fund or pool invests.

17 (4) "Compensation" means anything of economic value, however
18 designated, that is paid, loaned, granted, or transferred, or to be
19 paid, loaned, granted, or transferred for, or in consideration of,
20 personal services to any person.

21 (5) "Confidential information" means (a) specific information,
22 rather than generalized knowledge, that is not available to the general
23 public on request or (b) information made confidential by law.

24 (6) "Contract" or "grant" means an agreement between two or more
25 persons that creates an obligation to do or not to do a particular
26 thing. "Contract" or "grant" includes, but is not limited to, an
27 employment contract, a lease, a license, a purchase agreement, or a
28 sales agreement.

29 (7) "Ethics" means adherence to the standards as set forth in this
30 chapter.

31 (8) "Ethics boards" means the commission on judicial conduct, the
32 legislative ethics board, and the executive ethics board.

33 ~~((+8))~~ (9) "Family" has the same meaning as "immediate family" in
34 RCW 42.17A.005.

35 ~~((+9))~~ (10) "Gift" means anything of economic value for which no
36 consideration is given. "Gift" does not include:

37 (a) Items from family members or friends where it is clear beyond

1 a reasonable doubt that the gift was not made as part of any design to
2 gain or maintain influence in the agency of which the recipient is an
3 officer or employee;

4 (b) Items related to the outside business of the recipient that are
5 customary and not related to the recipient's performance of official
6 duties;

7 (c) Items exchanged among officials and employees or a social event
8 hosted or sponsored by a state officer or state employee for coworkers;

9 (d) Payments by a governmental or nongovernmental entity of
10 reasonable expenses incurred in connection with a speech, presentation,
11 appearance, or trade mission made in an official capacity. As used in
12 this subsection, "reasonable expenses" are limited to travel, lodging,
13 and subsistence expenses incurred the day before through the day after
14 the event;

15 (e) Items a state officer or state employee is authorized by law to
16 accept;

17 (f) Payment of enrollment and course fees and reasonable travel
18 expenses attributable to attending seminars and educational programs
19 sponsored by a bona fide governmental or nonprofit professional,
20 educational, trade, or charitable association or institution. As used
21 in this subsection, "reasonable expenses" are limited to travel,
22 lodging, and subsistence expenses incurred the day before through the
23 day after the event;

24 (g) Items returned by the recipient to the donor within thirty days
25 of receipt or donated to a charitable organization within thirty days
26 of receipt;

27 (h) Campaign contributions reported under chapter 42.17A RCW;

28 (i) Discounts available to an individual as a member of an employee
29 group, occupation, or similar broad-based group; and

30 (j) Awards, prizes, scholarships, or other items provided in
31 recognition of academic or scientific achievement.

32 ((+10+)) (11) "Head of agency" means the chief executive officer of
33 an agency. In the case of an agency headed by a commission, board,
34 committee, or other body consisting of more than one natural person,
35 agency head means the person or board authorized to appoint agency
36 employees and regulate their conduct.

37 ((+11+)) (12) "Honorarium" means money or thing of value offered to

1 a state officer or state employee for a speech, appearance, article, or
2 similar item or activity in connection with the state officer's or
3 state employee's official role.

4 ~~((12))~~ (13) "Official duty" means those duties within the
5 specific scope of employment of the state officer or state employee as
6 defined by the officer's or employee's agency or by statute or the
7 state Constitution.

8 ~~((13))~~ (14) "Participate" means to participate in state action or
9 a proceeding personally and substantially as a state officer or state
10 employee, through approval, disapproval, decision, recommendation, the
11 rendering of advice, investigation, or otherwise but does not include
12 preparation, consideration, or enactment of legislation or the
13 performance of legislative duties.

14 ~~((14))~~ (15) "Person" means any individual, partnership,
15 association, corporation, firm, institution, or other entity, whether
16 or not operated for profit.

17 ~~((15))~~ (16) "Regulatory agency" means any state board,
18 commission, department, or officer, except those in the legislative or
19 judicial branches, authorized by law to conduct adjudicative
20 proceedings, issue permits or licenses, or to control or affect
21 interests of identified persons.

22 ~~((16))~~ (17) "Responsibility" in connection with a transaction
23 involving the state, means the direct administrative or operating
24 authority, whether intermediate or final, and either exercisable alone
25 or through subordinates, effectively to approve, disapprove, or
26 otherwise direct state action in respect of such transaction.

27 ~~((17))~~ (18) "State action" means any action on the part of an
28 agency, including, but not limited to:

- 29 (a) A decision, determination, finding, ruling, or order; and
- 30 (b) A grant, payment, award, license, contract, transaction,
31 sanction, or approval, or the denial thereof, or failure to act with
32 respect to a decision, determination, finding, ruling, or order.

33 ~~((18))~~ (19) "State employee" means an individual who is employed
34 by an agency in any branch of state government. For purposes of this
35 chapter, employees of the superior courts are not state officers or
36 state employees.

37 ~~((19))~~ (20) "State officer" means every person holding a position
38 of public trust in or under an executive, legislative, or judicial

1 office of the state. "State officer" includes judges of the superior
2 court, judges of the court of appeals, justices of the supreme court,
3 members of the legislature together with the secretary of the senate
4 and the chief clerk of the house of representatives, holders of
5 elective offices in the executive branch of state government, chief
6 executive officers of state agencies, members of boards, commissions,
7 or committees with authority over one or more state agencies or
8 institutions, and employees of the state who are engaged in
9 supervisory, policy-making, or policy-enforcing work. For the purposes
10 of this chapter, "state officer" also includes any person exercising or
11 undertaking to exercise the powers or functions of a state officer.

12 ~~((+20+))~~ (21) "Thing of economic value," in addition to its
13 ordinary meaning, includes:

14 (a) A loan, property interest, interest in a contract or other
15 chose in action, and employment or another arrangement involving a
16 right to compensation;

17 (b) An option, irrespective of the conditions to the exercise of
18 the option; and

19 (c) A promise or undertaking for the present or future delivery or
20 procurement.

21 ~~((+21+))~~ (22)(a) "Transaction involving the state" means a
22 proceeding, application, submission, request for a ruling or other
23 determination, contract, claim, case, or other similar matter that the
24 state officer, state employee, or former state officer or state
25 employee in question believes, or has reason to believe:

26 (i) Is, or will be, the subject of state action; or

27 (ii) Is one to which the state is or will be a party; or

28 (iii) Is one in which the state has a direct and substantial
29 proprietary interest.

30 (b) "Transaction involving the state" does not include the
31 following: Preparation, consideration, or enactment of legislation,
32 including appropriation of moneys in a budget, or the performance of
33 legislative duties by an officer or employee; or a claim, case,
34 lawsuit, or similar matter if the officer or employee did not
35 participate in the underlying transaction involving the state that is
36 the basis for the claim, case, or lawsuit.

37 ~~((+22+))~~ (23) "University" includes "state universities" and
38 "regional universities" as defined in RCW 28B.10.016 and also includes

1 any research or technology institute affiliated with a university,
2 including (~~without limitation, the Spokane Intercollegiate Research~~
3 ~~and Technology Institute and the Washington Technology Center~~)
4 innovate Washington.

5 ((+23)) (24) "University research employee" means a state officer
6 or state employee employed by a university, but only to the extent the
7 state officer or state employee is engaged in research, technology
8 transfer, approved consulting activities related to research and
9 technology transfer, or other incidental activities.

10 **Sec. 3.** RCW 42.52.050 and 2005 c 274 s 292 are each amended to
11 read as follows:

12 (1) No state officer or state employee may accept employment or
13 engage in any business or professional activity that the officer or
14 employee might reasonably expect would require or induce him or her to
15 make an unauthorized disclosure of confidential information acquired by
16 the official or employee by reason of the official's or employee's
17 official position.

18 (2) No state officer or state employee may make a disclosure of
19 confidential information gained by reason of the officer's or
20 employee's official position or otherwise use the information for his
21 or her personal gain or benefit or the gain or benefit of another,
22 unless the disclosure has been authorized by statute or by the terms of
23 a contract involving (a) the state officer's or state employee's agency
24 and (b) the person or persons who have authority to waive the
25 confidentiality of the information.

26 (3) No state officer or state employee may disclose confidential
27 information to any person not entitled or authorized to receive the
28 information.

29 (4) No state officer or state employee may intentionally conceal a
30 record if the officer or employee knew the record was required to be
31 released under chapter 42.56 RCW, was under a personal obligation to
32 release the record, and failed to do so. This subsection does not
33 apply where the decision to withhold the record was made in good faith.
34 As used in this subsection, "intentionally concealing a record" means
35 that the state officer or state employee knew the record was required
36 to be released under chapter 42.56 RCW, knew of the record's existence,

1 and intentionally did not provide the record to the requestor within
2 the time frame established by the agency.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.52 RCW
4 to read as follows:

5 Knowing acquiescence by a person exempt under chapter 41.06 or
6 41.56 RCW with authority to direct, control, or influence the actions
7 of the state office or state employee in violation of RCW 42.52.020,
8 42.52.070, 42.52.120, or 42.52.160 constitutes a violation of this
9 chapter.

10 **Sec. 5.** RCW 42.52.120 and 1997 c 318 s 1 are each amended to read
11 as follows:

12 (1) No state officer or state employee may receive any thing of
13 economic value under any contract or grant outside of his or her
14 official duties. The prohibition in this subsection does not apply
15 where the state officer or state employee has complied with RCW
16 42.52.030(~~(+2)~~) or each of the following conditions are met:

17 (a) The contract or grant is bona fide and actually performed;

18 (b) The performance or administration of the contract or grant is
19 not within the course of the officer's or employee's official duties,
20 or is not under the officer's or employee's official supervision;

21 (c) The performance of the contract or grant is not prohibited by
22 RCW 42.52.040 or by applicable laws or rules governing outside
23 employment for the officer or employee;

24 (d) The contract or grant is neither performed for nor compensated
25 by any person from whom such officer or employee would be prohibited by
26 RCW 42.52.150(4) from receiving a gift;

27 (e) The contract or grant is not one expressly created or
28 authorized by the officer or employee in his or her official capacity;

29 (f) The contract or grant would not require unauthorized disclosure
30 of confidential information; and

31 (g) The state officer or state employee has attended an ethics
32 training approved by the appropriate ethics board within the past
33 thirty-six months.

34 (2) In addition to satisfying the requirements of subsection (1) of
35 this section, a state officer or state employee may have a beneficial

1 interest in a grant or contract or a series of substantially identical
2 contracts or grants with a state agency only if:

3 (a) The contract or grant is awarded or issued as a result of an
4 open and competitive bidding process in which more than one bid or
5 grant application was received; or

6 (b) The contract or grant is awarded or issued as a result of an
7 open and competitive bidding or selection process in which the
8 officer's or employee's bid or proposal was the only bid or proposal
9 received and the officer or employee has been advised by the
10 appropriate ethics board, before execution of the contract or grant,
11 that the contract or grant would not be in conflict with the proper
12 discharge of the officer's or employee's official duties; or

13 (c) The process for awarding the contract or issuing the grant is
14 not open and competitive, but the officer or employee has been advised
15 by the appropriate ethics board that the contract or grant would not be
16 in conflict with the proper discharge of the officer's or employee's
17 official duties.

18 (3) A state officer or state employee awarded a contract or issued
19 a grant in compliance with subsection (2) of this section shall file
20 the contract or grant with the appropriate ethics board within thirty
21 days after the date of execution; however, if proprietary formulae,
22 designs, drawings, or research are included in the contract or grant,
23 the proprietary formulae, designs, drawings, or research may be deleted
24 from the contract or grant filed with the appropriate ethics board.

25 (4) This section does not prevent a state officer or state employee
26 from receiving compensation contributed from the treasury of the United
27 States, another state, county, or municipality if the compensation is
28 received pursuant to arrangements entered into between such state,
29 county, municipality, or the United States and the officer's or
30 employee's agency. This section does not prohibit a state officer or
31 state employee from serving or performing any duties under an
32 employment contract with a governmental entity.

33 (5) As used in this section, "officer" and "employee" do not
34 include officers and employees who, in accordance with the terms of
35 their employment or appointment, are serving without compensation from
36 the state of Washington or are receiving from the state only
37 reimbursement of expenses incurred or a predetermined allowance for
38 such expenses.

1 **Sec. 6.** RCW 42.52.360 and 2005 c 106 s 5 are each amended to read
2 as follows:

3 (1) The executive ethics board shall enforce this chapter and rules
4 adopted under it with respect to statewide elected officers and all
5 other officers and employees in the executive branch, boards and
6 commissions, and institutions of higher education.

7 (2) The executive ethics board shall enforce this chapter with
8 regard to the activities of university research employees as provided
9 in this subsection.

10 (a) With respect to compliance with RCW 42.52.030, 42.52.110,
11 42.52.130, 42.52.140, and 42.52.150, the administrative process shall
12 be consistent with and adhere to no less than the current standards in
13 regulations of the United States public health service and the office
14 of the secretary of the department of health and human services in
15 Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity
16 in research.

17 (b) With respect to compliance with RCW 42.52.040, 42.52.080, and
18 42.52.120, the administrative process shall include a comprehensive
19 system for the disclosure, review, and approval of outside work
20 activities by university research employees while assuring that such
21 employees are fulfilling their employment obligations to the
22 university.

23 (c) With respect to compliance with RCW 42.52.160, the
24 administrative process shall include a reasonable determination by the
25 university of acceptable private uses having de minimis costs to the
26 university and a method for establishing fair and reasonable
27 reimbursement charges for private uses the costs of which are in excess
28 of de minimis.

29 (3) The executive ethics board shall:

30 (a) Develop educational materials and training;

31 (b) Adopt rules and policies governing the conduct of business by
32 the board, and adopt rules defining working hours for purposes of RCW
33 42.52.180 and where otherwise authorized under chapter 154, Laws of
34 1994;

35 (c) Issue advisory opinions;

36 (d) Investigate, hear, and determine complaints by any person or on
37 its own motion;

38 (e) Impose sanctions including reprimands and monetary penalties;

1 (f) Recommend to the appropriate authorities suspension, removal
2 from position, prosecution, or other appropriate remedy; and

3 (g) Establish criteria regarding the levels of civil penalties
4 appropriate for violations of this chapter and rules adopted under it.

5 (4) The board may:

6 (a) Issue subpoenas for the attendance and testimony of witnesses
7 and the production of documentary evidence relating to any matter under
8 examination by the board or involved in any hearing;

9 (b) Administer oaths and affirmations;

10 (c) Examine witnesses; (~~and~~)

11 (d) Receive evidence; and

12 (e) Delegate its authority to issue complaints to the board's
13 executive director.

14 (5) Except as provided in RCW 42.52.220, the executive ethics board
15 may review and approve agency policies as provided for in this chapter.

16 (6) This section does not apply to state officers and state
17 employees of the judicial branch.

18 **Sec. 7.** RCW 42.52.410 and 1994 c 154 s 211 are each amended to
19 read as follows:

20 (1) A person may, personally or by his or her attorney, make, sign,
21 and file with the appropriate ethics board a complaint on a form
22 provided by the appropriate ethics board. The complaint shall state
23 the name of the person alleged to have violated this chapter or rules
24 adopted under it and the particulars thereof, and contain such other
25 information as may be required by the appropriate ethics board.

26 (2) If it has reason to believe that any person has been engaged or
27 is engaging in a violation of this chapter or rules adopted under it,
28 an ethics board, or the executive director under authority delegated
29 under RCW 42.52.360, may issue a complaint.

30 (3)(a) A state employee who files a complaint with the appropriate
31 ethics board shall be afforded the protection afforded to a
32 whistleblower under RCW 42.40.050 and 49.60.210(2), subject to the
33 limitations of RCW 42.40.910. An agency, manager, or supervisor may
34 not retaliate against a state employee who files a complaint with the
35 appropriate ethics board.

36 (b) A state employee may not be denied the protections in chapter

1 42.40 RCW even if the ethics board denies an investigation of the
2 complaint.

3 (4) If a determination is made that a reprisal or retaliatory
4 action has been taken against the state employee, the retaliator may be
5 subject to a civil penalty of up to five thousand dollars and the
6 retaliator may be suspended from state employment for up to thirty days
7 without pay. At a minimum, a letter of reprimand shall be placed in
8 the retaliator's personnel file.

9 **Sec. 8.** RCW 42.52.420 and 2000 c 211 s 1 are each amended to read
10 as follows:

11 (1) After the filing of any complaint, except as provided in RCW
12 42.52.450, the staff of the appropriate ethics board shall investigate
13 the complaint as provided in this subsection (1).

14 (a) The ((investigation)) investigating ethics board shall ((be
15 limited to)) investigate the allegations contained in the complaint.
16 If the investigating ethics board discovers other potential ethics
17 violations during the course of its investigation, it may file a new
18 ethics complaint.

19 (b) Agency staff may assist ethics board staff in carrying out the
20 investigation, but in all cases ethics board staff must oversee the
21 investigation. Agency staff with actual or apparent conflicts of
22 interest because of a relationship with the persons under investigation
23 must disclose this relationship. Should the ethics board determine
24 that there is a conflict of interest that may affect the investigation,
25 the agency shall designate an independent employee with no conflict of
26 interest to assist the ethics board with its investigation.

27 (c) When the investigation involves an employee exempt under
28 chapter 41.06 or 41.56 RCW, and in the discretion of the ethics board,
29 the ethics board may request the assistance of the office of the
30 attorney general or a contract investigator in conducting its
31 investigation.

32 (2) The results of the investigation shall be reduced to writing
33 and the staff shall either make a determination that the complaint
34 should be dismissed pursuant to RCW 42.52.425, or recommend to the
35 board that there is or that there is not reasonable cause to believe
36 that a violation of this chapter or rules adopted under it has been or
37 is being committed.

1 (3) The board's determination on reasonable cause shall be provided
2 to the complainant and to the person named in such complaint.

3 (4) The identity of a person filing a complaint under RCW
4 42.52.410(1) is exempt from public disclosure at all times unless the
5 person filing a complaint consents to public disclosure and copying by
6 written waiver. All documents related to the complaint and subsequent
7 investigation are also exempt from public disclosure and copying and
8 shall not be released by any legislator or statewide elected official.

9 **Sec. 9.** RCW 42.52.460 and 1994 c 154 s 216 are each amended to
10 read as follows:

11 Any person who has notified the appropriate ethics board and the
12 attorney general in writing that there is reason to believe that RCW
13 42.52.180 is being or has been violated may, in the name of the state,
14 bring a citizen action for any of the actions authorized under this
15 chapter. A citizen action may be brought only if the appropriate
16 ethics board or the attorney general have failed to commence an action
17 under this chapter within forty-five days after notice from the person,
18 the person has thereafter notified the appropriate ethics board and the
19 attorney general that the person will commence a citizen's action
20 within ten days upon their failure to commence an action, and the
21 appropriate ethics board and the attorney general have in fact failed
22 to bring an action within ten days of receipt of the second notice. An
23 action is deemed to have been commenced when the appropriate ethics
24 board or the board's executive director accepts a complaint for filing
25 and initiates a preliminary investigation.

26 If the person who brings the citizen's action prevails, the
27 judgment awarded shall escheat to the state, but the person shall be
28 entitled to be reimbursed by the state of Washington for costs and
29 attorneys' fees incurred. If a citizen's action that the court finds
30 was brought without reasonable cause is dismissed, the court may order
31 the person commencing the action to pay all costs of trial and
32 reasonable attorneys' fees incurred by the defendant.

33 Upon commencement of a citizen action under this section, at the
34 request of a state officer or state employee who is a defendant, the
35 office of the attorney general shall represent the defendant if the
36 attorney general finds that the defendant's conduct complied with this
37 chapter and was within the scope of employment.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 42.52 RCW
2 to read as follows:

3 (1) Each agency shall designate an ethics advisor or advisors to
4 provide informal ethics advice to state officers and employees and to
5 ensure uniformity in the agency's operations with respect to the ethics
6 in public service law. Agencies shall inform the appropriate ethics
7 board of their designated advisors, and the advisors shall receive
8 regular training from the appropriate ethics board on a schedule to be
9 determined by the appropriate ethics board. Ethics advisors may
10 solicit informal and formal advice from the appropriate ethics board
11 and may also serve as a point of contact within an agency to assist
12 with ethics investigations or to coordinate ethics trainings and
13 updates.

14 (2) Every state officer and employee shall attend an ethics
15 training approved by the appropriate ethics board within sixty days of
16 taking office or employment. Beginning January 1, 2014, every state
17 officer and state employee shall attend an ethics training approved by
18 the appropriate ethics board in coordination with other agency-provided
19 training, including sexual harassment training, but no less than every
20 three years. Every state officer and state employee subject to RCW
21 42.52.150(4) must be provided specialized or enhanced ethics training
22 approved by the appropriate ethics board every three years thereafter.

23 NEW SECTION. **Sec. 11.** A new section is added to chapter 42.40 RCW
24 to read as follows:

25 No legislator or statewide elected official may be compelled to
26 disclose the following information:

27 (1) Information identifying a person who: (a) Makes a report of a
28 possible improper governmental action as defined in RCW 42.40.020 to
29 any legislator or statewide elected official; and (b) requests his or
30 her identity or any identifying information not be disclosed; and

31 (2) Investigative records compiled by a legislator or statewide
32 elected official conducting an investigation of a possible improper
33 governmental action as defined in RCW 42.40.020.

34 NEW SECTION. **Sec. 12.** A new section is added to chapter 42.56 RCW
35 to read as follows:

1 The following investigative information is exempt from public
2 inspection and copying under this chapter:

3 (1) Information identifying a person who: (a) Makes a report of a
4 possible improper governmental action as defined in RCW 42.40.020 to
5 any legislator or statewide elected official; and (b) requests his or
6 her identity or any identifying information not be disclosed;

7 (2) Investigative records compiled by a legislator or statewide
8 elected official conducting an investigation of a possible improper
9 governmental action as defined in RCW 42.40.020;

10 (3) Information identifying a person who: (a) Files a complaint
11 under chapter 42.52 RCW with an ethics board; and (b) requests his or
12 her identity or any identifying information not be disclosed; and

13 (4) Investigative records compiled by a legislator or statewide
14 elected official conducting an investigation of a possible ethics
15 violation pursuant to a complaint filed under chapter 42.52 RCW.

16 NEW SECTION. **Sec. 13.** RCW 42.52.500 (Optional hearings by
17 administrative law judge) and 1994 c 154 s 220 are each repealed.

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